



**SMASH**  
Solutions

**SMASH SOLUTIONS**

**SEO Booster Bar Wholesale/Sublicense Partnership Agreement**

*(White Label, Co-Branding, Wholesale and Sublicense Partner to Clients)*

**SMASH SOLUTIONS LLC**

**10757 S. Riverfront Parkway Suite 275**

**South Jordan, UT 84096**

**[www.SMASHolutions.com](http://www.SMASHolutions.com)**

**1-888-510-5504**

## SMASH SEO BOOSTER BAR WHOLESALE/SUBLICENSE PARTNERSHIP AGREEMENT

This SMASH SEO Booster Bar Wholesale/Sublicense Partnership Agreement is made as and entered into by and between SMASH SOLUTIONS, LLC, a Delaware limited liability company (hereinafter called "SMASH"), and the person or entity identified on Appendix A hereto ("Partner"), as of the Effective Date stated on Appendix A hereto.

### RECITALS

WHEREAS, SMASH is engaged in the business of software development and consulting and has developed and owns, operates, markets, sells or otherwise distributes certain bundled software tools and applications (collectively, the "SMASH Products"), including but not limited to an online advertising and traffic-generation resource referred to as the "SMASH SEO Booster Bar System," which utilizes or incorporates, among other things, a proprietary marketing widget intended to be installed or activated on one or more pages of various websites and referred to as the "Booster Bar;"

WHEREAS, the benefits of the SMASH SEO Booster Bar System in general, and the SEO Booster Bar in particular, have the potential to grow exponentially with each new user;

WHEREAS, SMASH desires to expand the user base for the SMASH SEO Booster Bar System by, among other things, establishing the SMASH SEO Booster Bar Partnership Program, pursuant to which SMASH shall license the SEO Booster Bar to one or more media partners, each of which shall have the right, on a non-exclusive basis, to use the SEO Booster Bar on its website, to customize the SEO Booster Bar and to market, promote, resell or otherwise distribute such customized SEO Booster Bar, either under its own brand or co-branded with SMASH (as indicated on Appendix A hereto), to its respective past, current and prospective clients (each, a "Partner Client");

WHEREAS, Partner desires to participate in the SMASH SEO Booster Bar Partnership Program and SMASH is willing to agree to such participation, on the terms and subject to the conditions set forth herein,

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants set forth herein, the parties hereby agree as follows:

1. SEO Booster Bar Partnership Program Participation. SMASH hereby agrees to enlist Partner, and Partner hereby agrees to participate, in the SMASH SEO Booster Bar Partnership Program, on the terms and subject to the conditions set forth herein.
2. Grant of Licenses. To facilitate Partner's participation in the SMASH SEO Booster Bar Partnership Program and, subject to Partner's payment to SMASH of the amounts set forth in Section 3 hereof, SMASH hereby grants Partner the following rights:

(a) SEO Booster Bar. SMASH hereby grants to Partner, during the Term of this Agreement, a limited, non-exclusive, license to access and use the SEO Booster Bar, including all modifications, enhancements and improvements thereto made or introduced by SMASH from time to time, and all documentation, including user documentation and other support documentation (but not including any source code or object code), subject to the terms and conditions set forth herein. All inventions, discoveries and improvements to the SMASH SEO Booster Bar System or any portion or element thereof, including the SEO Booster Bar, whether or not patentable or copyrightable, that are made, conceived, implemented or reduced to practice shall remain the sole property of SMASH, regardless of whether such inventions, discoveries or improvements are made, conceived, implemented or reduced to practice by SMASH, Partner, any Partner Client or any other person.

Partner shall have the right, during the Term of this Agreement, to sublicense only the right to use and access the SEO Booster Bar (but shall not have the right to sublicense its right to modify the SEO Booster Bar or any portion or element thereof) to its Partner Clients; provided, that Partner shall require, as a condition of each such sublicense, that each Partner Client shall execute and deliver a user agreement, the form and substance of which shall be satisfactory to SMASH and pursuant to which such Partner Client shall agree to abide by and comply with terms and conditions that are the same as or similar to, but in any case no less protective to SMASH than SMASH's User Agreement Terms and Conditions in effect from time to time, as set forth at <http://www.smashsolutions.com/home/useragreement> (the "SMASH Terms and Conditions"). SMASH shall notify Partner of any changes it makes to the SMASH Terms and Conditions from time to time, and Partner hereby agrees to make such corresponding changes to its terms and conditions as may be necessary to protect SMASH's interests to at least the same extent as such interests are protected under the SMASH Terms and Conditions then in effect within sixty (60) days following notice from SMASH. Partner acknowledges and agrees, and shall instruct each of its Partner Clients, that such Partner Client shall not be permitted to modify the SEO Booster Bar or the SMASH SEO Booster Bar System or any element thereof in any manner whatsoever. For purposes of clarity, the foregoing right to sublicense use and access of the SEO Booster Bar does not include any right to use, access or otherwise obtain any source code or object code relating to the SEO Booster Bar or the SMASH SEO Booster Bar System or any portion or element thereof. Other than as expressly set forth herein, Partner may not copy, disclose, provide, or otherwise make the SEO Booster Bar or the SMASH SEO Booster Bar System or any portion or element thereof available to any other person in any form whatsoever. Partner acknowledges and agrees that all rights not expressly granted to Partner hereunder are reserved to SMASH.

(b) SMASH Marks. SMASH hereby grants Partner, during the Term of this Agreement, a limited, non-exclusive, personal, indivisible, nontransferable and royalty-free license to use certain of SMASH's trademarks identified on Appendix A hereto (the "SMASH Marks"), to use solely in connection with the installation or activation of the SEO Booster Bar on its Partner Clients' websites, and for the purpose of developing advertising, marketing and other promotional materials with respect to the SMASH SEO Booster Bar Partnership Program or the SEO Booster Bar and distributing such materials to its Partner Clients. Partner may

sublicense only the right to use such SMASH Marks to its Partner Clients solely in connection with the activation or installation of the SEO Booster Bar on such Partner Client's websites; provided, that Partner shall require, as a condition of each such sublicense, that each Partner Client execute and deliver a user agreement, the form and substance of which shall be satisfactory to SMASH and pursuant to which such Partner Client shall agree to abide by and comply with the provisions of this Section 2(b). Neither Partner nor any Partner Client may, during or after the term of this Agreement, engage in any conduct that, directly or indirectly, would infringe upon, harm or contest SMASH's rights in or to any of the SMASH Marks or the goodwill associated with the SMASH Marks, including by any use of the SMASH Marks in any unlawful, defamatory, abusive, obscene, indecent, discriminatory, or otherwise objectionable manner in any form of media. Except as expressly set forth herein, neither Partner nor any Partner Client shall obtain any right, title or interest in, or any right to use, any trademark, service mark, copyright or other intellectual property right of SMASH.

3. Consideration. Partner agrees that, in exchange for the licenses and other rights granted pursuant to Section 2 hereof, and for such other services as SMASH may render pursuant hereto, Partner shall pay SMASH an Activation Fee in the amount set forth on Appendix A hereto with respect to each Partner Client who activates or installs the SEO Booster Bar on any website owned or operated by such Partner Client (irrespective of whether such SEO Booster Bar is visible on such Partner Client website, and irrespective of the number of pages of such website on which the SEO Booster Bar shall be used), and shall continue to pay SMASH a Retention Fee in the amount set forth on Appendix A hereto with respect to each Partner Client for each month, or any portion thereof, that such Partner Client retains the SEO Booster Bar on one or more pages of any website owned or operated by such Partner Client (irrespective of whether such SEO Booster Bar is visible on such Partner Client website). Partner understands and agrees that the Activation Fee shall be automatically charged to Partner immediately upon Partner's establishing each Partner Client's account. SMASH agrees that the Activation fee shall remain as a credit on Partner's account until such time as the associated Partner Client SEO Booster Bar is activated and begins receiving live traffic (the "Anniversary Date"). Thereafter, the Retention Fee with respect to such Partner Client shall be automatically charged to Partner on the Anniversary Date of each subsequent month or portion thereof, for so long that such Partner Client retains the SEO Booster Bar on one or more pages of any website owned or operated by it. In the event the associated Partner Client SEO Booster Bar is not activated and the Partner Client account is closed by Partner, the Activation Fee shall remain as a credit on Partner's account for use as payment towards other Partner Client fees. Partner understands and agrees that Partner shall be liable for all such payments to SMASH irrespective of whether Partner has received payment of any amounts from any Partner Client. Partner further understands and agrees that, if any amount due and payable to SMASH hereunder, is not fully paid within five (5) banking days following its due date (or in the event any credit card transaction is not able to be processed within two (2) banking days), SMASH shall have the right to deactivate the account of the Partner Client to which such payment relates.

4. Partner Rights and Obligations. At all times while this Agreement remains in effect, Partner shall:

- (a) have the right to use the SEO Booster Bar on its website.
- (b) have the right to actively promote its customized SEO Booster Bar to its Partner Clients, either bundled together with one or more other Partner products and/or services or on a stand-alone basis (as indicated on Appendix A).
- (c) have the right to actively promote its customized SEO Booster Bar to its Partner Clients, either under Partner's own brand or co-branded with SMASH (as indicated on Appendix A).
- (d) modify its existing agreements with its clients, field agents and affiliates as necessary to, among other things, obtain each Partner Client's authorization to (i) modify such Partner Client's website to include the Partner-branded SEO Booster Bar and install the link cloud; and (ii) grant Partner, each other Partner Client, SMASH and each of SMASH's other partners' Partner Clients the right to display and use such Partner Client's applicable marks and logos in connection with the SEO Booster Bar.
- (e) activate the Partner-branded SEO Booster Bar on all Partner Client websites using the activation protocol set forth on SMASH's administrative site to ensure that SMASH may, among other things, determine the start and stop date for each such Partner Client;
- (f) refrain from use of terminology that implies any guarantee of any specific level of results, income, commissions or earnings based on use of any SMASH Product or service, including but not limited to the SEO Booster Bar.
- (g) implement and abide by, and use commercially reasonable efforts to ensure each Partner Client implements and abides by, such requirements and recommendations directed at enhancing substantial system uniformity as SMASH may communicate to Partner from time to time.

5. SMASH Rights and Obligations. At all times while this Agreement remains in effect, SMASH shall:

- (a) host the SMASH SEO Booster Bar System Software Solution (the "Software") on its servers and maintain and support such Software.
- (b) provide "back office" administrative services to Partner and its Partner Clients in connection with their use of the SEO Booster Bar. If and as requested by Partner, SMASH may provide advice or recommendations regarding enhancements or upgrades to Partner Client websites that may be required to permit such websites to accommodate additional traffic that may be generated as a result of the SEO Booster Bar; provided, however, Partner and/or Partner Clients shall be solely

responsible for implementing any such enhancements or upgrades, and SMASH shall have no responsibility or liability resulting from the inability of any Partner Client website to accommodate additional traffic.

- (c) provide telephone, IM and or live chat support to Partner and its Partner Clients (through Partner, as provided herein) in accordance with the SMASH Terms and Conditions during SMASH's regular business hours (9:00 am to 6:00 pm Mountain Time), and shall provide Partner with an after-hours emergency contact number. If Partner markets, promotes, resells or otherwise distributes the SEO Booster Bar under its own brand, all communications between SMASH customer service representatives and any Partner Client shall be facilitated through Partner via means of a three-way telephone or video conference, during which SMASH representatives shall protect Partner's branding of the SEO Booster Bar by refraining from identifying themselves as SMASH employees or otherwise referring to SMASH or any of the SMASH Products.
- (d) provide, within the SEO Booster Bar, a URL or other software link that is unique to Partner and, if Partner markets, promotes, resells or otherwise distributes the SEO Booster Bar under its own brand, that does not identify the Partner-branded SEO Booster Bar as a SMASH Product.
- (e) have the right to modify, add to or rescind any requirement, standard, specification or feature relating to the SMASH SEO Booster Bar System or any portion or element thereof to adapt to changing conditions, competitive circumstances, business strategies, business practices and technological innovations and other changes as SMASH, in its sole discretion, deems appropriate.

6. No Exclusivity.

(a) Partner further acknowledges that the license and rights granted to Partner hereunder are non-exclusive, and agrees that SMASH shall at all times have the right to enter into similar arrangements with other media or other companies on such terms and conditions as SMASH, in its sole discretion, shall deem appropriate. Each party further acknowledges and agrees that certain Partner Clients may already subscribe to other SMASH Products and that nothing in this Agreement is intended to affect such Partner Clients' use of such SMASH Products, or obligate either party to pay any compensation to the other in connection therewith.

(b) The parties acknowledge and agree that each of them may promote, market, sell or otherwise distribute the SEO Booster Bar to the same or similar clients or customers, and that nothing in this Agreement is intended to restrict or limit either party from promoting, marketing, selling or otherwise distributing the SEO Booster Bar to any party. The parties further acknowledge that each of them may, from time to time, target the same customers. To avoid market confusion regarding the parties' respective versions of the SEO Booster Bar,

Partner hereby agrees to provide to SMASH, on a monthly basis, a list of all prospective customers to which Partner intends to market its version of the SEO Booster Bar. To the extent SMASH determines that the parties are targeting one or more of the same customers, SMASH may request and Partner shall provide, additional information regarding Partner's initial contact with each such prospective customer. Thereafter, the parties agree to confer in good faith to resolve any potential conflict and to determine how to proceed with respect to each such prospective customer.

7. Rights Regarding Additional SMASH Products. The parties each acknowledge and agree that, as of the date hereof, the rights granted to Partner pursuant to this Agreement relate solely to the SEO Booster Bar. In the event the parties subsequently determine that it would be mutually advantageous for Partner to promote, market, sell or otherwise distribute any additional SMASH Products, the parties shall modify this Agreement by affixing one or more additional appendices, each in substantially the same form as Appendix A hereto, which shall then become part of and be incorporated into this Agreement as of its effective date. As of the effective date of each such appendix, if any, all rights granted and all obligations imposed herein with respect to the SEO Booster Bar shall be deemed to be granted with respect to the additional SMASH Product identified on such appendix.

8. Proprietary Rights.

(a) SMASH Proprietary Rights. Partner acknowledges that SMASH retains all ownership and legal title to each and every SMASH Product, including the SMASH SEO Booster Bar System and each and every element and all intellectual property incorporated or embodied therein, including but not limited to the Software and the SEO Booster Bar (collectively, the "SMASH Intellectual Property"). Partner agrees to treat the SMASH Intellectual Property as confidential trade secrets of SMASH, and further agrees to employ all commercially reasonable means to protect the SMASH Intellectual Property from any unauthorized use, reproduction, publication, disclosure or distribution. Without limiting the generality of the foregoing, Partner agrees to employ security procedures with respect to the SMASH Intellectual Property no less protective than the procedures Partner employs to protect its own trade secrets. Partner shall not remove, alter, cover or obfuscate any copyright notice, trademark or other proprietary notices placed in or on the SMASH Intellectual Property or any portion thereof. Partner shall not, and shall not permit any other person to, reverse engineer, disassemble or decompile any software, prototypes or other tangible objects that embody any SMASH Intellectual Property.

(b) Partner Proprietary Rights. SMASH acknowledges that Partner retains all ownership and legal title to all of its intellectual property (collectively, the "Partner Intellectual Property"). SMASH agrees to treat the Partner Intellectual Property as confidential trade secrets of Partner, and further agrees to employ all commercially reasonable means to protect the Partner Intellectual Property to which it may gain access from any unauthorized use, reproduction, publication, disclosure or distribution. Without limiting the generality of the foregoing, SMASH agrees to employ security procedures with respect to such Partner Intellectual Property no less protective than the procedures SMASH employs to protect its own

trade secrets. SMASH shall not remove, alter, cover or obfuscate any copyright notice, trademark or other proprietary notices placed in or on the Partner Intellectual Property or any portion thereof. SMASH shall not, and shall not permit any other person to, reverse engineer, disassemble or decompile any software, prototypes or other tangible objects that embody any Partner Intellectual Property.

9. Confidentiality. Each of the parties acknowledges that one or both them may disclose Confidential Information (as defined below) to the other in the course of transacting business pursuant to this Agreement, and hereby agrees as follows:

(a) "Confidential Information" shall mean any and all information directly or indirectly disclosed by or on behalf of one party or its respective owners, officers, directors, employees, representatives or agents (in any case, the "Disclosing Party") to the other party or its respective owners, officers, directors, employees, representatives or agents (in any case, the "Receiving Party"), in writing, electronically, orally, by observation or by inspection of tangible objects. "Confidential Information" shall include, without limitation, the parties' respective Intellectual Property (as defined in Section 8 hereof), and all documents, prototypes, research, development and inventions on all matters and technology in various stages of development, including all matters relating to inventions in the process of being patented, product plans, strategies, analyses, trade secrets, products, proposed products, services, names and addresses and other identifying information regarding Disclosing Party's customers (including prospective customers identified pursuant to Section 6(c) hereof), clients or suppliers, software, developments, inventions, processes, techniques, procedures, designs, drawings, diagrams, schematics, engineering, hardware configurations, flow charts, specifications, data, programming code, know-how, programs, marketing plans and materials, employee and equityholder information, forecasts, pricing, and historical or projected financial information, together with all information derived, extracted or summarized from any of the foregoing, in each case, regardless of whether such information is marked as "Confidential," "Proprietary" or other similar designation. If any party makes copies of the Confidential Information, such copies shall also constitute Confidential Information and any and all confidential markings on such documents shall be maintained. The existence and all aspects of any ongoing discussions, negotiations or business dealings between the parties shall be deemed to be "Confidential Information." "Confidential Information" shall not include information that (a) was publicly known and made generally available in the public domain prior to the time of disclosure by the Disclosing Party; (b) becomes publicly known and made generally available after disclosure by the Disclosing Party to the Receiving Party through no action or inaction by or on behalf of the Receiving Party; (c) is already in the possession of the Receiving Party at the time of disclosure by the Disclosing Party, as shown by the Receiving Party's files and records immediately prior to the time of disclosure; (d) is obtained by the Receiving Party from a third party without a breach of such third party's obligations of confidentiality; (e) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as shown by documents and other competent evidence in the Receiving Party's possession; or (f) is required to be disclosed by the Receiving Party pursuant to an order issued by any court or other governmental authority; provided that the Receiving Party gives the Disclosing Party

prompt written notice of such order and shall cooperate fully with the Disclosing Party's efforts to protect the confidentiality of the Confidential Information subject to such order.

(b) The Receiving Party shall at all times use its best efforts to protect the secrecy of and avoid disclosure or unauthorized use of the Disclosing Party's Confidential Information. Without limiting the generality of the foregoing, the Receiving Party shall take at least those measures that it takes to protect its own Confidential Information, and shall immediately notify the Disclosing Party of any misuse or misappropriation of Confidential Information of which it becomes aware. The Receiving Party agrees that it will not use, disclose or distribute any portion of the Confidential Information except to its officers, directors, employees, representatives, advisors, agents and contractors who are required to have such Confidential Information for the purpose of exercising the Receiving Party's rights or complying with the Receiving Party's obligations under this Agreement; provided, that the Receiving Party shall advise all such persons of the confidential and proprietary nature of the Confidential Information. The Receiving Party hereby agrees that it will not, and will use its best efforts to ensure that its officers, directors, employees, representatives, advisors, agents and contractors do not use, disclose or distribute any Confidential Information to any other person. The Receiving Party shall be liable for any unauthorized use, disclosure or distribution of Confidential Information by any person to whom it provides the Confidential Information. The Receiving Party shall not reverse engineer, disassemble or decompile any software, prototypes or other tangible objects that embody the Confidential Information of the Disclosing Party.

(c) Each party understands and agrees that any violation of Sections 8 or 9 of this Agreement will cause the Disclosing Party immediate and irreparable harm that monetary damages cannot adequately remedy. Therefore, upon any actual or threatened violation of such provisions, each party consents to the issuance by any court of competent jurisdiction of a restraining order or other injunctive relief, restraining or enjoining such violation by such party or any entity or person acting in concert with such party. The Receiving Party hereby waives any requirement that the Disclosing Party prove the economic value of any Confidential Information or post any bond or other security in connection with the enforcement of its rights hereunder. Each party understands that such relief is in addition to, and does not limit the availability to the Disclosing Party of, any other remedy available at law or in equity.

#### 10. Infringement.

(a) Infringement Actions. If, during the Term of this Agreement, any action or proceeding is threatened or commenced against SMASH or Partner alleging that Partner's or any Partner Client's use of the SMASH Intellectual Property authorized hereunder infringes the proprietary rights of any person, SMASH or Partner, as the case may be, shall give the other party immediate verbal notice thereof, followed by written notice stating the full particulars, within fifteen (15) days after receipt of the notice from the alleging person. Each party shall cooperate fully with the other in its defense of any such action or proceeding.

(b) Infringement of the Intellectual Property. If, during the Term of this Agreement,

any person's unauthorized use of the Software or infringement of the SMASH Intellectual Property Software comes to the attention of Partner or SMASH, Partner or SMASH, as the case may be, shall give the other party hereto prompt written notice thereof, stating full particulars. Each party shall cooperate with and assist the other party in its investigation and prosecution of any such unauthorized use. SMASH shall have the right, but not the obligation, at its own expense, to commence any action or proceeding concerning the unauthorized use or infringement, and Partner shall cooperate fully with SMASH in such action or proceeding. If, during the Term of this Agreement, any person's unauthorized use or infringement of any Partner Intellectual Property comes to the attention of SMASH or Partner, SMASH or Partner, as the case may be, shall give the other party hereto prompt written notice thereof, stating full particulars. Each party shall cooperate with and assist the other party in its investigation and prosecution of any such unauthorized use. Partner shall have the right, but not the obligation, at its own expense, to commence any action or proceeding concerning the unauthorized use or infringement, and SMASH shall cooperate fully with Partner in such action or proceeding.

(c) Limitation of Liability. IN NO EVENT SHALL EITHER PARTY HERETO BE LIABLE FOR LOSS OF PROFITS, REVENUES, OR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES.

#### 11. Term and Termination.

(a) Term. The Term of this Agreement shall commence on the date set forth on Appendix A hereto and, unless earlier terminated in accordance with subsection (b) below, shall remain in effect for one (1) year. Thereafter, this Agreement shall automatically renew for successive one (1)-year terms unless either party delivers written notice of its intent not to renew to the other party not less than ninety (90) days prior to the expiration of the then-current Term.

(b) Termination. Either party may terminate this Agreement in the event the other party (a) has made any fraudulent representation in or materially breaches its obligations under this Agreement or (b) takes, or a third party takes, any steps for such party to be dissolved or liquidated. SMASH shall have the right to deactivate any Partner Client account for which any amount due and payable to SMASH hereunder is not fully paid within five (5) banking days following its due date (or in the event any credit card transaction is not able to be processed within two (2) banking days). SMASH shall have the further right to terminate this Agreement, and to deactivate Partner's account and, subject to subsection (d) below, the accounts of each Partner Client, in the event late payments totalling \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) accumulate at any time during the Term hereof.

(c) Notice of Termination. Partner agrees to deliver written notice to each of its Partner Clients not later than three (3) business days following expiration or termination of this Agreement for any reason.

(d) Effect of Termination. Notwithstanding the expiration or termination of this

Agreement, each Partner-branded SEO Booster Bar activated for any Partner Client during the Term of this Agreement shall remain active for the then-remaining term or duration for which such Partner Client has subscribed or contracted with Partner for such service; provided that (i) SMASH has been able to retrieve information regarding such term duration from its administrative site as set forth in Section 4(c) hereof, and (ii) Partner shall continue to make timely payment of all Retention Fees associated with such Partner Client accounts in accordance with Section 3 hereof throughout such remaining term or duration. In the event SMASH has terminated this Agreement for any reason set forth in subsection (b) above (*i.e.*, Partner insolvency or habitual late payment), SMASH shall have the right to contact each Partner Client with an active SEO Booster Bar and may offer to reactivate such Partner Client's account directly with SMASH at SMASH's then-current rates and subject to its then-current SMASH Terms and Conditions.

12. Notices. Any notice, consent or other communications required or permitted under this Agreement shall be in writing and delivered by personal delivery, certified mail with return receipt requested, or by a recognized overnight courier, addressed to each party at the address specified for such party on Appendix A hereto. Notices shall be deemed given when received, if delivered by personal delivery, or on the date shown on the carrier delivery receipt or the date of the final delivery attempt made by the carrier.

13. Warranties. SMASH disclaims any and all warranties, express, implied or otherwise, with regard to the SMASH SEO Booster Bar System, including the Software, including all warranties of performance for a particular purpose, and/or merchantability, whether express, implied or statutory, and whether relating to title and/or non-infringement. SMASH will agree to fix, repair or amend any Software issues that are related to the original Software should the Software fail; however SMASH will not be held responsible for any losses that may occur due to Software or system failure.

14. Indemnification: Partner hereby agrees to indemnify, defend and hold SMASH and each of its officers, directors, shareholders, members, managers, employees and agents (each, a "SMASH Indemnified Party") harmless from and against any and all claims, actions, damages, costs, expenses, fines, lawsuits, liabilities, losses, deficiencies, penalties, or other obligations (whether or not arising out of third-party claims), including court costs, attorneys' fees and reasonable costs of investigation and proof, incurred as a result of or in connection with Partner's or any Partner Client's use of the SMASH Intellectual Property or any portion or element thereof in any manner not expressly authorized hereby. In the event any legal action is taken or threatened against or involving any SMASH Indemnified Party in connection with such matters, Partner shall promptly advance expenses upon demand to reimburse or cover current obligations for any such loss, liability, damages, claims and expenses (including court costs, attorneys' fees and reasonable costs of investigation and proof), regardless of whether a final disposition of the matter or a determination of its merits has been obtained. SMASH hereby agrees to indemnify, defend and hold Partner and each of its officers, directors, shareholders, members, managers, employees and agents (each, a "Partner Indemnified Party") harmless from and against any and all claims, actions, damages, costs, expenses, fines, lawsuits,

liabilities, losses, deficiencies, penalties, or other obligations (whether or not arising out of third-party claims), including court costs, attorneys' fees and reasonable costs of investigation and proof, incurred as a result of or in connection with SMASH's use of any Partner Intellectual Property in any manner not expressly authorized hereby. In the event any legal action is taken or threatened against or involving any Partner Indemnified Party in connection with such matters, SMASH shall promptly advance expenses upon demand to reimburse or cover current obligations for any such loss, liability, damages, claims and expenses (including court costs, attorneys' fees and reasonable costs of investigation and proof), regardless of whether a final disposition of the matter or a determination of its merits has been obtained.

15. Relationship of the Parties. Nothing in this Agreement shall be construed to create any agency or joint venture relationship between the parties, and neither party shall have the authority to bind the other. The use of the term "Partner" to designate SMASH's client as identified in Appendix A is solely for the sake of convenience, and does not in any way confer upon or imply the formation of a partnership, joint venture, or franchise between the parties.

16. Miscellaneous.

(a) Governing Law. This Agreement shall be governed by and construed under the laws of the State of Utah, without regard to its conflicts of law principles.

(b) Dispute Resolution. With the exception of the matters subject to Section 9(c) hereof, any dispute regarding the validity or terms of this Agreement and any other disputes between the parties shall be resolved exclusively by binding arbitration conducted in Salt Lake County, Utah in accordance with the then-current commercial arbitration rules of the American Arbitration Association. The arbitrator shall be empowered to award specific performance, injunctive relief and damages (but not exemplary or punitive damages). The prevailing party shall be entitled to recover from the non-prevailing party its costs and expenses (including reasonable attorneys' and expert fees) incurred in resolving such dispute. The decision of the arbitrator shall be binding on the parties, and judgment in accordance with that decision may be entered in any court having proper jurisdiction. No party shall disclose the existence of any dispute or the terms of any arbitration decision to any third party, other than its legal counsel, accountants, financial advisors or as required by law, except as may be required to enforce such arbitration or award.

(c) Severability; Waiver. Should any provision of this Agreement be held unenforceable or in conflict with the laws of any applicable jurisdiction, then the validity of the remaining provisions shall not be affected by such a holding. No waiver by either party of any default shall be deemed a waiver of a prior or subsequent default of the same or other provisions of this Agreement.

(d) Assignment; Successors. Except for Partner's right to sublicense use of and access to the SEO Booster Bar to its Partner Clients as set forth in Section 2 hereof, Partner may not assign, pledge or transfer all or any part of this Agreement or any of its rights or

obligations hereunder to any person or entity (other than a parent, subsidiary or affiliate of Partner) without SMASH's prior written consent, and any such attempted assignment, pledge or transfer shall be void. Except as otherwise provided herein, this Agreement shall inure to the benefit of and shall be binding upon the parties, and their respective heirs, successors, transferees and assigns.

(e) Entire Agreement. This Agreement, together with all appendices hereto and the SMASH Terms and Conditions, constitutes the entire agreement between the parties and supersedes any prior understandings or agreements concerning the subject matter hereof. Partner acknowledges and agrees that SMASH has not made and does not make, and Partner has not received or relied upon, any representation or warranty of any kind, express or implied, except to the extent contained herein.

Additional terms & conditions

If additional terms or conditions are required place them here and they will take the highest priority in this agreement.

IN WITNESS WHEREOF, the parties hereto have caused this SMASH SEO Booster Bar Wholesale/Sublicense Partnership Agreement to be executed by their duly authorized representatives and to become effective as of the day and year first above written.

SMASH

SMASH SOLUTIONS LLC,  
a Delaware limited liability company

By: \_\_\_\_\_

Name: Carl Doane

Title: President

PARTNER

NAME OF MEDIA PARTNER  
\_\_\_\_\_

STATE OF FORMATION AND TYPE OF ENTITY  
\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**APPENDIX A**  
**TERMS OF SMASH SEO BOOSTER BAR WHOLESALE/SUBLICENSE PARTNERSHIP AGREEMENT**

**Effective Date:** \_\_\_\_\_

**Partner:** Partner Name: \_\_\_\_\_

State of Entity: \_\_\_\_\_

Type of Entity: \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_  
\_\_\_\_\_

**Activation Fee:** \$ 99.00 / Partner Client Website  
(not per page)

**Retention Fee:** \$ 99.00 / Partner Client / Month  
**(one month increments)**

**SMASH Product for which License is Granted:**  
\_\_\_\_\_

**SMASH Marks for which License is Granted:**  
\_\_\_\_\_

**Branding of SEO Booster Bar:** Co-Brand with SMASH: \_\_\_\_\_ Partner Brand: \_\_\_\_\_

**Partner to Market SEO** Only Bundled with Other Partner Stand-Alone

**Booster Bar:** Products: \_\_\_\_\_ Basis: Booster Bar Stand Alone

**SMASH Address for Notices:** SMASH SOLUTIONS LLC  
Attention: Accounting  
10757 South Riverfront Parkway,  
Suite 275

South Jordan, Utah 84096